

## Costs Decision

Inquiry held on 25, 26 and 27 April 2017

Site visit made on 10 April 2017

**by Jameson Bridgwater PGDipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 30 May 2017**

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**Appeal Ref: APP/P0119/W/16/3155791**

**The Council Offices, Castle Street, Thornbury, South Gloucestershire BS35 1HF**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Andrew Burgess (Churchill Retirement Living) for an award of costs against South Gloucestershire Council.
  - The appeal was against a failure to give notice within the prescribed period of a decision on an application for planning permission for a proposal described as 'Demolition and redevelopment to form 5 cottages and 57 sheltered apartments for the elderly including communal facilities, landscaping, parking, access and associated works'.
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### Decision

1. The application for an award of costs is allowed in the terms set out below.

### Reasons

2. National Planning Practice Guidance (the Guidance) advises that, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeals process.
3. The Guidance further sets out that parties in planning appeals and other planning proceedings normally meet their own expenses. Additionally the Guidance is clear that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
4. The appellant states that the Council acted unreasonably on the basis that it introduced new points not set out in its statement of case in relation to daylight, the requirements of the Housing Technical Standards and alleged breaches of the design guidance contained within Building for Life 12. The appellant has stated that this amounts to the introduction of fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. The Council have argued that they were not making a technical point in relation to daylighting that needed to be rebutted by technical evidence. However, it is clear from the Council's evidence<sup>1</sup> that they held significant concerns in relation

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<sup>1</sup> Mr Bunce's Proof of Evidence Paragraph 4.43

to the level of natural light stating "the final design is woefully inadequate in providing natural light". I therefore conclude that it was necessary to respond to the Council's contention and prepare and submit a technical analysis of daylighting. The appellant's report demonstrates that the assertion made by the Council was unjustified by objective evidence as the relevant daylighting standards and guidelines had been achieved.

6. In relation to conflict with the Housing Technical Standards and Building for Life 12 (BfL12), the Council have stated that this was a reliance on publically available and well-recognised design standards, which were referred to in e-mails during the application process with the applicant and in the statement of case, did not amount to a new reason for refusal or the introduction of new evidence. However, the Housing Technical Standards have not been adopted in South Gloucestershire; and the justification within the emerging policy is clear that it should not be applied until 6 months after adoption of the South Gloucestershire Policies Sites and Places Plan. Moreover, it was accepted by the Council at the Inquiry that their assessment of living space standards was erroneous and the evidence contained within the appellant's rebuttal statement<sup>2</sup> demonstrated that no breach had occurred.
7. Further, there is no substantive evidence that demonstrates that the Council's design concerns in relation to BfL12 were raised at the pre-application stage, in officer's report or in the Council's Statement of Case. In these circumstances BfL12 is explicit in stating "*if BfL12 has not been used throughout the planning process we do not support its use as a justification for the refusal of a planning application*". Furthermore, the appellant's rebuttal clearly demonstrates that there is no failure to comply with design guidance contained within BfL12.
8. Therefore, the actions of the Council by introducing late and unsubstantiated evidence in relation to design standards has resulted in the appellant having to prepare and submit a rebuttal statement to address the new points in relation to design standards raised by the Council.
9. Having reached the conclusions above the Council has introduced fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.
10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Gloucestershire Council shall pay to Mr Andrew Burgess (Churchill Retirement Living), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in commissioning Right to Light Consulting to prepare the report dated 21st April 2017 and the costs of preparing Mr McCarthy's Rebuttal Proof of Evidence; such costs to be assessed in the Senior Courts Costs Office if not agreed.

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<sup>2</sup> Mr McCarthy Rebuttal Statement

11. The applicant is now invited to submit to South Gloucestershire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Jameson Bridgwater*

INSPECTOR